

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN D. CERQUEIRA,

Plaintiff,

V.

AMERICAN AIRLINES, INC.,

Defendant.

CIVIL ACTION NO.: 05-11652 WGY

DEFENDANT'S PROPOSED JURY VERDICT FORM

The Defendant, American Airlines, Inc., submits this Proposed Jury Verdict Form subject to its right to request that it be revised to comport with the evidence presented at trial.

Respectfully submitted,
AMERICAN AIRLINES, INC.
 By its Attorneys,

/s/ Michael A. Fitzhugh
Michael A. Fitzhugh, (BBO 169700)
Amy Cashore Mariani, (BBO #630160)
FITZHUGH, PARKER & ALVARO LLP
155 Federal Street, Suite 1700
Boston, MA 02110-1727
617) 695-2330

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on December 28, 2006.

/s/ Michael A. Fitzhugh
Michael A. Fitzhugh

I. 42 U.S.C. §1981

- A. Has the plaintiff proven, by a preponderance of the evidence, that he is a member of a race that is considered a protected class?

Yes___ No___

If your answer to question IA is yes, proceed to question IC. If your answer to question IA is no, proceed to question IB.

- B. Has the plaintiff proven by a preponderance of the evidence, that American perceived him to be a member of a race that is considered a protected class?

Yes___ No___

If you answer to question IB is yes, proceed to IC. If your answer to question IB is no, **proceed to the bottom of this form and have the jury foreperson sign and date it and ring for the Court officer.**

- C. Has the plaintiff proven, by a preponderance of the evidence that American intended to unlawfully discriminate against him on the basis of his being an actual or perceived member of a race that is considered a protected class?

Yes___ No___

If your answer to question IC is yes, proceed to question ID. If your answer to question IC is no, **proceed to the bottom of this form and have the jury foreperson sign and date it and ring for the Court officer.**

42 U.S.C., § 1981

- D. Has the plaintiff proven, by a preponderance of the evidence that he contracted with American for the provision of air transport services?

Yes___ No___

Proceed to question IE.

M.G.L. c. 272 §98

- E. Has the plaintiff proven, by a preponderance of the evidence, that air transport services constitute a place of public accommodation?

Yes___ No___

If your answer to question IE is yes, proceed to question IF. If your answer to question IE is no, proceed to question IH.

F. Has American proven, by a preponderance of the evidence, that it had a legitimate business reason for denying the plaintiff service on December 28, 2003?

Yes___ No___

If your answer to question IF is yes, proceed to question IG. If your answer to question IF is no, proceed to Section IH.

G. Has the plaintiff proven, by a preponderance of the evidence, that the legitimate business reason cited by American for denying him service on December 28, 2003 is a pretext and that the real reason for its denial of service to him was discrimination?

Yes___ No___

If your answer to question IG is yes, proceed to question IH. If your answer to question IG is no, **proceed to the bottom of this form and have the jury foreperson sign and date it and ring for the Court officer.**

42 U.S.C. §2000d

H. Has the plaintiff proven, by a preponderance of the evidence, that American received federal financial assistance in the form of a subsidy aside from that available to it under the Airline Stabilization Act.

Yes___ No___

If your answer to question IH is yes, proceed to Section II. If your answer to question IH is no, proceed to Section II.

Proceed to Section II.

II. Affirmative Defenses

A. 49 U.S.C. §44902(b)

1. Did American have a legitimate security interest in removing Mr. Cerqueira from Flight 2237 on December 28, 2003?

Yes___ No___

If your answer to question IIA(1) is yes, proceed to question IIA(4). If your answer to question IIA(1) is no, proceed to question IIA(2).

2. Did American have another good faith and rational reason for removing Mr. Cerqueira from Flight 2237 on December 28, 2003?

Yes___ No___

If your answer to question IIA(2) is yes, proceed to question IIA(4). If your answer to question IIA(2) is no, proceed to question IIA(3).

3. Did American act arbitrarily and capriciously in removing Mr. Cerqueira from Flight 2237 on December 28, 2003?

Yes___ No___

Proceed to question IIA(4).

4. Did American have a legitimate security interest in denying rebooking to Mr. Cerqueira on December 28, 2003?

Yes___ No___

If your answer to question IIA(4) is yes, **proceed to the bottom of this form and have the jury foreperson sign and date it and ring for the Court officer.** If your answer to question IIA(4) is no, proceed to question IIA(5).

5. Did American have another good faith and rational reason besides security for denying rebooking to Mr. Cerqueira on December 28, 2003?

Yes___ No___

If your answer to question IIA(5) is yes, **proceed to the bottom of this form and have the jury foreperson sign and date it and ring for the Court officer.** If your answer to question IIA(5) is no, proceed to question IIA(6).

6. Did American act arbitrarily and capriciously in denying rebooking to Mr. Cerqueira on December 28, 2003?

Yes___ No___

If your answer to question IIA(6) is yes, proceed to Section III. If your answer to question IIA(6) is no, **proceed to the bottom of this form and have the jury foreperson sign and date it and ring for the Court officer.**

III. Damages

A. Actual Damages

1. Did the plaintiff prove, by a preponderance of the evidence, that he suffered actual monetary damages in connection with American's denial of service to him on December 28, 2003?

Yes___ No___

If your answer to question IIIA(1) is yes, proceed to question IIIA(2). If your answer to question IIIA(1) is no, proceed to Section IIIB.

2. List the dollar amounts proven by the plaintiff by a preponderance of the evidence in each of the categories below:

| | |
|-----------------------------------|---------------|
| Lost income | \$___ |
| Medical expenses | \$___ |
| Other (identify with specificity) | \$___ (_____) |

Proceed to Section IIIB.

B. Emotional Distress Damages

1. Did the plaintiff prove, by a preponderance of the evidence, that he suffered emotional distress as a result of discrimination committed by American on December 28, 2003?

Yes___ No___

If you answer to question IIIB(1) is yes, proceed to question IIIB(2). If your answer to question IIIB(1) is no, proceed to Section IIIC.

2. List the dollar amount of any emotional distress damages proven by the plaintiff by a preponderance of the evidence.

\$____

C. Mitigation of Damages

1. Did the plaintiff take appropriate steps to minimize or mitigate the damages that he suffered as a result of the events of December 28, 2003?

Yes__

No__

If your answer to question IIIC(1) is no, proceed to question IIIC(2). If you answer to question IIIC(1) is yes, proceed to Section IIID.

2. If you find that the plaintiff failed to take appropriate steps to minimize or mitigate the damages that he suffered as a result of the events of December 28, 2003, list the dollar amount of losses that he failed to prevent in each of the categories listed below:

Lost income \$____

Medical expenses \$____

Emotional distress damages \$____

Other (identify with specificity) \$____ (_____)

D. Punitive Damages

1. Has the plaintiff proven, by a preponderance of the evidence, that American's actions on December 28, 2003 were extreme and outrageous such that it transgressed all bounds of decency and was utterly intolerable in a civilized community?

Yes__

No__

If your answer to question IIID(1) is yes, proceed to question IIID(2). If your answer to question IIID(1) is no, **proceed to the bottom of this form and have the jury foreperson sign and date it and ring for the Court officer.**

2. Has the plaintiff proven, by a preponderance of the evidence, that American's actions on December 28, 2003 were motivated by evil?

Yes___ No___

If your answer to question IIID(2) is yes, proceed to question IIID(3). If your answer to question IIID(2) is no, **proceed to the bottom of this form and have the jury foreperson sign and date it and ring for the Court officer.**

3. Has the plaintiff proven, by a preponderance of the evidence, that American's actions on December 28, 2003 constituted reckless indifference toward him?

Yes___ No___

If your answer to question IIID(3) is yes, proceed to question IIID(4). If your answer to question IIID(3) is no, **proceed to the bottom of this form and have the jury foreperson sign and date it and ring for the Court officer.**

4. Has the plaintiff proven, by a preponderance of the evidence, that American's actions caused him extreme emotional distress?

Yes___ No___

If your answer to question IIID(4) is yes, proceed to question IIID(5). If your answer to question IIID(4) is no, **proceed to the bottom of this form and have the jury foreperson sign and date it and ring for the Court officer.**

5. Taking into account any mitigating factors found by you with regard to American's actions, what amount of punitive damages, if any, should be assessed against American?

\$___

Signed this ___ day of January, 2007.

Jury Foreperson